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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re:

THE REMODELING COMPANY,

Debtor-in-Possession.

Case No. 16-42231 RLE

Chapter 11

Date: October 25, 2016

Time: 1:30 p.m.

Place: Room 201, 1300 Clay Street
Oakland, California 94612

**UNITED STATES TRUSTEE'S MOTION TO CONVERT CASE TO CHAPTER 7, OR,
IN THE ALTERNATIVE, TO DISMISS CASE OR APPOINT A CHAPTER 11
TRUSTEE, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

Tracy Hope Davis, the United States Trustee for Region 17 ("United States Trustee"), by and through her undersigned counsel, hereby moves this Court for an order converting the above-captioned case to chapter 7, or for an order dismissing the case or appointing a Chapter 11 trustee, for cause under 11 U.S.C. § 1112(b) (the "Motion"). Cause exists for this relief based upon the following:

1 • Debtor-in-Possession failed, without good cause, to attend two scheduled
2 meetings of creditors convened under 11 U.S.C. § 341(a). This failure constitutes cause under
3 11 U.S.C. § 1112(b)(4)(G); and

4 • Debtor-in-Possession failed timely to provide information and attend meetings
5 reasonably requested by the United States Trustee. This failure constitutes cause under 11
6 U.S.C. § 1112(b)(4)(H).

7 **I. INTRODUCTION.**

8 Cause exists to convert this case to chapter 7 or, in the alternative, to dismiss this case or
9 appoint a Chapter 11 trustee, because Debtor-in-Possession failed to attend two scheduled
10 meetings of creditors convened under 11 U.S.C. § 341(a). In addition, the Debtor-in-Possession
11 failed timely to provide information and to attend initial debtor interviews requested by the
12 United States Trustee.

13 In support of this Motion, the United States Trustee requests that the Court consider the
14 Memorandum of Points and Authorities incorporated herein, and the Declaration of Bankruptcy
15 Auditor Jim Palmer in Support of the United States Trustee’s Motion to Convert Case to Chapter
16 7 or, in the Alternative, to Dismiss Case or Appoint a Chapter 11 Trustee (“Palmer Decl.”) filed
17 concurrently with this Motion.

18 **II. STATEMENT OF FACTS.**

19 1. Debtor-in-Possession, The Remodeling Company, Inc., filed a voluntary petition
20 for relief under chapter 11 on August 8, 2016. Petition, Dkt. No. 1. At the time of filing and
21 throughout the case, the Debtor-in-Possession has been represented by attorney Dennis Yan.

22 2. On August 9, 2016, the Clerk of the Court issued a “Notice of Chapter 11
23 Bankruptcy case, Meeting of Creditors, and Deadlines. Notice, Dkt. No. 2. That notice set the
24 initial date for the meeting of creditors for September 12, 2016, at 1:00 p.m., at the Office of the
25 United States Trustee in Oakland, California. *Id.* at p. 1.

3. The United States Trustee scheduled an initial debtor interview (“IDI”) with the
Debtor-in-Possession for September 21, 2016 at 11:30 a.m. Palmer Decl. at ¶5. Prior to that

1 date, the United States Trustee requested that the Debtor-in-Possession produce certain
2 documents. Palmer Decl. at ¶5. The Debtor-in-Possession did not attend the IDI. ¶6.

3 4. Bankruptcy Auditor Palmer rescheduled the IDI to take place telephonically on
4 September 27, 2016. Palmer Decl. at ¶ 6. Neither the Debtor-in-Possession nor his counsel made
5 themselves available for this telephonic meeting, nor did the Debtor-in-Possession produce any
6 of the requested documents. Palmer Decl. at ¶ 7.

7 5. The Debtor-in-Possession did not attend his scheduled meeting of creditors on
8 September 12, 2016. His attorney appeared 15 minutes after the scheduled start time of the
9 meeting of creditors and informed the attorney for the United States Trustee that the Debtor-in-
10 Possession would not be attending. Docket Notes entered 9/13/16.

11 6. The United States Trustee continued the September 12, 2016 meeting of creditors
12 until September 26, 2016 at 2:00 p.m. at the Office of the United States Trustee in Oakland,
13 California. Docket Notes entered 9/13/16. Neither the Debtor-in-Possession nor his counsel
14 attended the continued meeting of creditors. Docket Notes entered 9/27/16.

15 7. The Court set a status conference in this case for September 27, 2016. Docket No.
16 6. An attorney for the United States Trustee appeared. Neither the Debtor-in-Possession nor his
17 proposed counsel appeared at the status conference. Docket Notes entered 9/27/16. At the status
18 conference, the Court granted the United States Trustee's oral motion for shortened time and to
19 set dates for the United States Trustee's Motion. *Id.*

20 8. Although neither the Debtor-in-Possession nor his counsel attended the status
21 conference, on September 27, 2016, the Debtor-in-Possession filed a motion to dismiss the case.
22 Dkt. No. 14.

23 **III. JURISDICTION.**

24 The Bankruptcy Court has original and exclusive jurisdiction over this bankruptcy case
25 under 28 U.S.C. § 1334(a), 28 U.S.C. § 157, and 28 U.S.C. § 151. The Bankruptcy Court also

1 has subject matter jurisdiction to adjudicate the contested matter presented by the Motion
2 pursuant to 28 U.S.C. § 1334(b) as the relief sought under Section 1112(b)(1) constitutes a civil
3 proceeding arising under the Bankruptcy Code.

4 Adjudication of the Motion constitutes a core proceeding under 28 U.S.C.
5 §§ 157(b)(2)(A) and (O). The filing of a motion pursuant to FRBP 1017(f)(1) initiates a
6 contested matter governed by FRBP 9014. Venue of this case and the contested matter presented
7 by the Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

8
9 **IV. THE UNITED STATES TRUSTEE HAS STANDING TO SEEK RELIEF REQUESTED.**

10 The United States Trustee is charged with supervising the administration of cases under
11 chapter 11 of title 11, *see* 28 U.S.C. § 586(a)(3), and may raise and be heard on any issue in any
12 case or proceeding, except that the United States Trustee may not file a chapter 11 plan. *See* 11
13 U.S.C. § 307. *See also Stanley v. McCormick, Barstow, Sheppard, Wayte & Carruth (In re*
14 *Donovan Corp.)*, 215 F.3d 929, 930 (9th Cir. 2000) (“The United States Trustee may be heard on
15 any issue in any case or proceeding under title 11.”).

16 The United States Trustee has standing to file a motion to dismiss or convert a case under
17 chapter 11 pursuant to 11 U.S.C. § 1112(b). 28 U.S.C. § 586. In addition, section 586(a)(8) of
18 Title 28 added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
19 (“BAPCPA”) states:

20 (a) Each United States Trustee . . . shall - (8) in any case in which the
21 United States trustee finds material grounds for any relief under section 1112 of
22 title 11, the United States trustee shall apply promptly after making that finding to
the court for relief.

23 **V. POINTS AND AUTHORITIES.**

24 **A. Cause Exists To Convert Case to Chapter 7.**

25 Section 1112(b) of the Bankruptcy Code provides, in pertinent part, that on the request of

1 a party in interest, and after notice and a hearing, absent unusual circumstances specifically
2 identified by the court that establish that the requested conversion or dismissal is not in the best
3 interests of creditors and the estate, the court shall convert the case to chapter 7, dismiss the case,
4 appoint a chapter 11 trustee, or appoint an examiner, whichever is in the best interests of
5 creditors of the estate, if the movant establishes cause.

6 Section 1112(b)(4) sets forth a list of 16 grounds that constitute “cause” for conversion or
7 dismissal. See 11 U.S.C. § 1112(b)(4)(A)-(P); *see also In re Gateway Access Solutions, Inc.*,
8 374 B.R. 556, 560 (Bankr. M.D. Pa. 2007). This list is not exhaustive, and a case may be
9 dismissed or converted for causes other than those specifically identified in Section 1112(b)(4).
10 “Cause is a flexible standard, subject to the Court’s discretion, and does not necessarily involve
11 one or all of the those factors set forth in Section 1112(b)(4).” *YBA Nineteen, LLC v. IndyMac*
12 *Venture, LLC (In re YBA Nineteen, LLC)*, 505 B.R. 289, 302 (S.D. Cal. 2014), *citing In re Prods.*
13 *Int’l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008). *See also In re AmeriCERT, Inc.*, 360 B.R.
14 398, 401 (Bankr. D. N.H. 2007) (“The list is not exhaustive . . . a case may be dismissed for
15 other causes, such as bad faith or if the petition does not serve a bankruptcy purpose.”); *In re*
16 *Jayo*, 2006 WL 2433451, *6 (Bankr. D. Idaho July 28, 2006) (“In [the Ninth] Circuit, the court
17 has discretion to consider alleged causes not specifically listed in §1112(b).”).

18 **1. Cause Exists Under Section 1112(b) Because Debtor-in-**
19 **Possession Failed to Attend Two Scheduled Meetings of**
20 **Creditors Without Good Cause.**

21 The “[f]ailure to attend the meeting of creditors convened under section 341(a) . . .
22 without good cause shown by the debtor” constitutes “cause” to convert or dismiss a case under
23 11 U.S.C. § 1112(b)(4)(G). *See, e.g., In re Oakland Hills Land Development, LLC*, 2010 WL
24 5553362 *1 (Bankr. E.D. Mich. June 23, 2010) (case converted where debtor’s responsible
individual without good cause failed to attend the Section 341 meeting).

25 In this case, the Debtor-in-Possession failed to attend two scheduled meetings of creditors

1 without good cause. Debtor-in-Possession's counsel failed to contact the United States Trustee
2 either before or after the scheduled meetings to advise that his client was unable to attend.
3 Failure to attend scheduled meetings of creditors constitutes cause for relief under 11 U.S.C. §
4 1112(b)(4)(G).

5 **2. Cause Exists Under Section 1112(b) Because Debtor-in-**
6 **Possession Failed Timely to Provide Information and Attend**
7 **Meetings Reasonably Requested by the United States Trustee.**

8 The failure to timely provide documents requested by the United States Trustee in
9 preparation for an IDI or to attend a scheduled IDI constitutes cause for dismissal or conversion
10 under 11 U.S.C. § 1112(b)(4)(H). Every chapter 11 debtor is required to produce certain
11 documents requested by the United States Trustee and to attend a scheduled IDI. Congress
12 recognized the need for debtor cooperation and thus made dismissal or conversion the
13 consequence for a debtor's lack of cooperation. The United States Trustee cannot fulfill her
14 responsibilities without basic documents and information provided in an informal interview with
15 the Debtor.

16 Here, despite a timely request for documents in preparation for the IDI, the Debtor-in-
17 Possession produced no documents. In addition, the Debtor-in-Possession failed to attend the
18 IDI and provided no explanation for this failure. These failures constitute cause for relief under
19 11 U.S.C. § 1112(b)(4)(H).

20 **3. The Case Should be Converted.**

21 Section 1112(b)(1) of the Bankruptcy Code provides that once cause is established, the
22 court shall dismiss or convert a case to chapter 7, whichever is in the best interests of creditors
23 and the estate. Alternatively, the court may appoint a chapter 11 trustee or examiner where cause
24 exists to dismiss or convert but the court determines that appointment of a chapter 11 trustee or
25 examiner is in the best interests of creditors. 11 U.S.C. § 1112(b)(1). *See In re Products Intern.*
Co., 395 B.R. 101 (Bankr. D. Ariz. 2008). This determination requires the court to conduct a

balancing test and consider the interests of all creditors and the estate. *Id*; see *Shulkin Hutton, Inc., v. Treiger, et al (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009).

Section 1112(b)(2) permits the court to find and specifically identify “unusual circumstances” establishing that the requested conversion or dismissal of the case is not in the best interests of creditors and the estate. 11 U.S.C. § 1112(b)(2). *In re Products Intern. Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008); *In re Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (section 1112(b) establishes a two-step analysis for dealing of questions of conversion or dismissal.) Once “cause” is found, the burden shifts to the debtor to demonstrate that there is a reasonable likelihood that a plan will be confirmed within a reasonable time, and, if the cause shown includes an act or omission of the debtor, “(i) [] there exists a reasonable justification for the act or omission”; and (ii) it will be cured within a reasonable time fixed by the court.” 11 U.S.C. § 1112(b)(2)(A)-(B).

Due to the Debtor-in-Possession’s failure to provide documents and to attend both the IDI and the meeting of creditors, the United States Trustee has no information regarding the Debtor-in-Possession’s assets and liabilities. Therefore, the United States Trustee requests conversion, but reserves the right to seek the alternate relief of dismissal or appointment of a Chapter 11 trustee.

B. There Are No Known Compelling Circumstances to Justify A Continuance.

Section 1112(b)(3) provides that “[t]he court shall commence the hearing” on a motion to convert or dismiss under section 1112(b)(1) “not later than 30 days after filing of the motion” and decide the motion “not later than 15 days after commencement of such hearing unless movant expressly consents to a continuance [] or compelling circumstances prevent the court from meeting the time limits.” 11 U.S.C. § 1112(b)(3). The United States Trustee is not aware of compelling circumstances that justify deviating from the time frames required by section 1112(b)(3).

1 **VI. PRAYER FOR RELIEF.**

2 Based upon the foregoing, the United States Trustee respectfully requests this Court enter
3 an order (1) granting the Motion; (2) converting the case to chapter 7, or granting alternative
4 relief under Section 1112(b); and (3) for such other and further relief as is just and appropriate.

5 Dated: October 7, 2016

6
7 TRACY HOPE DAVIS
 United States Trustee for Region 17

8 /s/Barbara A. Matthews /
9 BARBARA A. MATTHEWS
 Trial Attorney, Oakland Division